Hearing Date: January 19, 2011 at 10:00 a.m. (Prevailing Eastern Time)
Objection Deadline: January 12, 2011 at 4:00 p.m. (Prevailing Eastern Time)

STROOCK & STROOCK & LAVAN LLP
Curtis C. Mechling
Mark A. Speiser
Sherry Millman
180 Maiden Lane
New York, New York 10038
Telephone: (212) 806-5400
Facsimile: (212) 806-6006

Attorneys for District Council 37, Local 2021
-and-
DC 37 Benefits Fund Trust

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: NEW YORK CITY OFF-TRACK BETTING CORPORATION, Debtor.	Chapter 9 Case No. 09-17121 (MG)

OBJECTION OF DISTRICT COUNCIL 37, LOCAL 2021 AND DC 37 BENEFITS FUND TRUST TO MOTION OF NEW YORK CITY OFF-TRACK BETTING CORPORATION TO DISMISS CHAPTER 9 CASE

District Council 37, Local 2021 ("DC 37" or the "Union") and DC 37 Benefits Fund Trust (the "Fund") (together the "DC 37 Parties"), by and through their undersigned counsel, as and for their objection to the Motion of New York City Off-Track Betting Corporation ("NYC OTB" or the "Debtor") to Dismiss Chapter 9 Case, respectfully represent as follows:

PRELIMINARY STATEMENT

1. On December 15, 2010, NYC OTB filed a motion to dismiss this Chapter 9 case (the "Dismissal Motion"), stating that it intended to complete closure of its operations and that it

would not seek to confirm a plan of debt adjustment [Docket No. 242]. The Debtor reasoned therein that because no other party could propose a plan of debt adjustment under Chapter 9, "continuation of the Chapter 9 case would not serve any purpose." Dismissal Motion at p. 8. The Debtor is wrong. There is a critical reason to keep this case open: so that the Court may exercise the powers granted it under the Bankruptcy Code to appoint a trustee to pursue and recover what will likely prove to be the Debtor's biggest asset – claims for fraudulent transfers made to the New York State racing industry (collectively, the "New York Tracks").

2. The Union has made a motion to this Court seeking appointment of a trustee pursuant to section 926(a) of the Bankruptcy Code to recover hundreds of millions of dollars in payments made by the Debtor to the New York Tracks without corresponding value at a time when NYC OTB was severely undercapitalized or insolvent and incurring (but not reserving for) hundreds of millions of dollars in post employment retiree benefits and other obligations (the "Trustee Motion")[1] [Docket No. 247].

3. As set forth in the Trustee Motion, recovery of these funds from the New York Tracks is especially crucial for the NYC OTB retirees represented by the Union. The Debtor cut off health and welfare benefits to these union members and New York State (the "State") and the City of New York (the "City") have each renounced responsibility to make good on the benefit obligations. This means that recovery on the fraudulent transfer claims may prove the only source of payment for the millions owed this loyal workforce.

4. Accordingly, the DC 37 Parties submit that the Court should keep this case open for the limited purpose of allowing the proposed litigation to proceed. This relief will cause no

[1] The content of the Trustee Motion is incorporated herein by reference in its entirety.

harm to the Debtor and will in no way interfere with the State's sovereign powers. While NYC OTB can continue its wind down, continuation of the Chapter 9 case will ensure that NYC OTB retirees are not left without recourse on this Court's watch.

The Union, The Fund and The Benefits

5. DC 37 is a public employee union which represents over 1,000 employees of NYC OTB as well as over 600 of its retirees. The Fund is a supplemental benefits fund in which Local 2021's members are participants.

6. Within the last few weeks, DC 37 was advised that the NYC OTB employees it represents were being terminated and that the post-employment health and welfare benefits upon which the retirees and their beneficiaries rely (commonly called "OPEBs") were being terminated. In addition, NYC OTB announced that the required contributions to the Fund for the retirees for November 2010 of $77,802.39 had not been made, that the contributions for December 2010 in the estimated amount of $78,000 would not be made and that no contributions would be made thereafter.[2] The DC 37 Parties were also informed that the City and State had no intention of providing any relief to this constituency for these OPEB liabilities, which are estimated at over $230 million.

7. Given that over the last several years, in the face of these known and mounting obligations to the retirees, a financially distressed NYC OTB paid out hundreds of millions of dollars to the New York Tracks (and to the City and State) without receiving reasonably equivalent value or fair consideration, the Union brought the Trustee Motion pursuant to section

[2] Retiree contributions due for January 2011 would be approximately $80,789. NYC OTB had also failed to make welfare fund contributions in the amount of $150,740.23 for the months of October and November, 2009.

926(a) of the Bankruptcy Code to recover these fraudulent transfers for the benefit of the retirees and all creditors.

8. The Trustee Motion is scheduled for hearing on the same date as the Dismissal Motion, and other creditors have filed submissions in support of the Trustee Motion. Were this Court to grant the Dismissal Motion, it would deprive the retirees and other creditors of a valuable source of recovery which is sanctioned by the Bankruptcy Code.

Grounds for Denial of the Dismissal Motion

9. As stated in the Dismissal Motion, the Debtor ceased its operations in early December, 2010, and has been in wind-down mode since. Thus, the Debtor is asking this Court to perform the ministerial act of dismissing the case of an entity which is already shut down.

10. Section 930 of the Bankruptcy Code governs dismissal. Pursuant to that section, dismissal is mandatory only if "confirmation of a plan under this chapter is refused" (which is not the circumstance herein); otherwise dismissal is within the discretion of the Court, upon a showing of cause.

11. The DC 37 Parties do not dispute that, as a general rule, a Chapter 9 debtor is entitled to seek voluntary dismissal of its case. However, where, as here, dismissal is a mere procedural formality and there is an urgent need by the creditors for recovery of assets supported by a specific grant of authority in section 926, this Court should exercise the discretion accorded it under section 930 and determine not to entertain the Dismissal Motion.

12. The Debtor should not be heard to complain. It sought refuge in this Court in the first place while seeking a legislative solution. When NYC OTB suffered a setback in the State

Senate last month, it determined that such efforts were futile and, apparently, its invocation of this Court's jurisdiction had outlived its usefulness as well. The DC 37 Parties do not agree. The process may have failed the current employees of NYC OTB who are now out of work, but it must not also fail the retirees who served loyally (not to mention the many other creditors who stand to recover nothing) – not when the Court has section 926 as a powerful weapon in its arsenal to do equity.

13. There can be no question that this Court is the proper forum for the fraudulent conveyance litigation. These causes of action are rooted in bankruptcy law. Further, since the challenged payments were mandated by the State, fairness dictates that a Federal court rather than a State court should review them.

14. Concerns about interfering with a Chapter 9 debtor's business or the State's powers over that entity are not implicated in this case, since the Debtor will be shuttered with or without a dismissal order. Rather, this case can proceed for the limited purpose of pursuing the fraudulent transfer causes of action, just as a Chapter 11 debtor often liquidates while preserving causes of action for subsequent litigation. In In re L.N. Slott Company, Inc., 13 .B.R. 387 (Bankr. E.D.Pa. 1981), for example, the court explained that "favorable results in the four adversary proceedings in which the debtor-in-possession is the plaintiff would result in an influx of assets to the estate," thereby justifying denial of a motion to dismiss the case.

15. Given the absence of harm to the Debtor and the enormous potential benefit of the relief sought in the Trustee Motion to all creditors, and in particular to the lower and middle class retirees who were left "holding the bag" at year end, the DC 37 Parties believe that the decision to deny the dismissal request at this time is an easy and just one.

WHEREFORE DC 37 and DC 37 Benefits Fund Trust request that this Court enter an order denying the Dismissal Motion or alternatively delaying dismissal of the case for the purpose of enabling a trustee appointed pursuant to Section 926(a) to pursue fraudulent conveyance causes of action against the New York Tracks, and granting such other and further relief as is just and proper.

Dated: New York, New York
January 11, 2011

STROOCK & STROOCK & LAVAN LLP

/s/ Curtis C. Mechling

Curtis C. Mechling
Mark A. Speiser
Sherry Millman
180 Maiden Lane
New York, New York 10038
Telephone: (212) 806-5400
Facsimile: (212) 806-6006

Attorneys for District Council 37, Local 2021
-and-
DC 37 Benefits Fund Trust